IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.878 OF 2005

Junnar Taluka Shikshan Prasarak
Mandal Junnar & Anr. .. Petitioners

Versus

State of Maharashtra & Anr. .. Respondents

Ms.Anita Agarwal for petitioners
Mr.A.V.Anturkar i/b. Vilas Tapkir for
respondent Nos. 3 to 9
Ms.Vaidehi Mhaispurkar, A.G.P. for State

WITH

WRIT PETITION NO.9133 OF 2005

Anant Mukund Joglekar & Ors. .. Petitioners

Versus

Junnar Taluka Shivner Shikshan

Prasarak Mandal & Ors. .. Respondents

Mr.V.A.Thorat, Senior Advocate with Mr.A.L.Patki and Mr.R.D.Gate for petitioners
Mr.A.V.Anturkar i/b. Vilas Tapkir for respondent No.13.
Ms.Vaidehi Mhaispurkar, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th April 2006.

ORAL JUDGEMENT:-

. These writ petitions are under Articles 226 and 227 of the Constitution of India. They are challenging the decision/ order rendered on 29th November 2005 delivered by the Deputy Charity Commissioner, Pune. The facts giving rise to these petitions are briefly narrated hereinbelow.

2. Writ Petition No.9133 of 2005 is by persons who have applied for becoming members of

the Junnar Taluka Shivner Shikshan Prasarak Mandal (for short Trust). According to them, their applications were valid and they were otherwise eligible. Hence, they should be enrolled as members of the Trust. They are entitled to participate in the affairs of the Trust including its elections.

3. The trust was registered in the year 1970. The main aim and object of the Trust is to impart Education to the down trodden and under privileged classes of people, particularly in Junnar Taluka. It is the case of petitioners that earlier trustees of the trust had committed several acts of mis-feasance and mal-feasance. One Sopanrao Pandharinath Nikam had filed an application being Application No.24 of 1991 before Joint Charity Commissioner, Pune. The application invoked Charity Commissioner's power under section 41-D of the Bombay Public Trust Act (for short BPT Act) and he sought removal of

seven trustees. This application was allowed and earlier seven trustees were removed by the Joint Charity Commissioner. He directed the scheme be framed for administration of the Trust. He had appointed an Administrator to the Trust.

4. Pursuant to the directions of the Joint Charity Commissioner, the Dy.Charity Commissioner, Pune framed a scheme vide order dated 6th April 2000. This was an suo mottu exercise by the Dy.Charity Commissioner. The scheme postulates that to fulfil above objects of the Trust, it is free to enroll members. Clause 6 of the scheme provides for membership. The condition therein is that anybody who is competent to contract and a Graduate so also agreeing with the objects of the Trust, can become a member. The person must apply and his application will be placed before the Managing Committee. After approval of the managing committee, the applicant would be enrolled as a

member. The managing committee is empowered to reject the application but it must assign cogent reasons. The condition is that if an application remains pending, then, that would be a disqualification for the managing committee members to contest next election. There is only one category of membership. The annual fee is Rs.501/- which is to be paid every year before 31st December. If the said amount is not paid, then membership can be cancelled automatically. The earlier category of members may continue. As far as Trustees are concerned, the number thereof is restricted to 9. The term of office of the Trustees is five years and, thereafter, elections will be held in a general body meeting. A member can contest election to the post of Trustee only twice. The managing Committee/ Trustee’s term is also five years. Their elections are to be held from amongst persons who have been elected at the general body meeting.

5. It is stipulated in the scheme that till the new managing committee assumes charge, the old managing committee can look after affairs of the Trust. However, three months before expiry of its term, the outgoing managing committee should initiate process of election. If the process is not initiated, then, after a period of six months from the expiry of the term of old managing committee, the Assistant Charity Commissioner can appoint Administrator till fresh elections are held. It is clarified that after the expiry of its term, the old managing Committee should not take any policy decisions. As far as any person being eligible to be appointed as trustee, he should be a member for atleast two years. It is stipulated in the scheme that in terms of clause 21(3)(e) a list of members is to becertified by the office of Charity Commissioner. That persons in this list alone can participate would in the elections. The other condition in the scheme is that upto

31st March every year, the list of members should be filed with the office of Asstt.Charity Commissioner and it should be certified by him.

6. After referring to these clauses, it is contended that although the scheme was framed on 6th April 2000, the first Board of Trustees assumed charge on 7th May 2000. Its term would have ended on 7th May 2005. However, all documents and records were handed over to present trustees by the Inspector in the office of Dy.Charity Commissioner on 5th June 2000. Hence, the Board actually started functioning from 5th June 2000. It is contended that vide a public notice (Exh.B), issued on 22nd April 2001, the Trustees invited applications for membership in prescribed form. The last date stipulated in the public advertisement is 15th May 2001. Several applications were filed. They were scrutinised from time to time in the meeting of trustees and 108 persons were enrolled as members. It is

contended that several applications were received from time to time and upon scrutiny the applicants were enrolled as members.

7. It is contended by petitioners that by applications dated 25th April 2005 and thereafter, petitioners applied for membership of the Trust. They are about 64 in number. They paid membership fees of Rs.7000/-. Each one of them is a graduate. Thus, they fulfil the requirement stipulated in the scheme for membership. Upon scrutiny, the trustees resolved vide Resolution dated 2nd May 2005 (Exh.E) that the petitioners are entitled to become members.

8. On 3rd May 2005, vide application (Exh.F), the names of the petitioners were communicated to the Dy.Charity Commissioner. The request was to certify their membership. The list was from Serial No.1 to 248. Application in that behalf is made vide Exh.G.

9. It appears that one Sanjay Shivajirao Kale, respondent No.13 in the first petition opposed and objected to the membership of petitioners on the sole ground that they were enrolled after the expiry of the period of the present trustees and that the present trustees were not entitled to consider these applications. The objection of respondent No.13 was based upon the fact that the term of Trustees is from 6th April 2000 for a period of five years and, therefore, the applications considered thereafter i.e. April 2005 are invalid could and not have been accepted. It is the case of petitioners that application (Exh.G) bearing No.63 of 2005 was entertained by the Dy.Charity Commissioner and without issuing any notice to them as also without affording any opportunity of being heard, he rejected the prayer of the Trust to enroll 64 petitioners, whose names appeared at Serial Nos. 185 to 248 of the list. An order was passed to

that effect by him on 24th June 2005. The finding of the Dy.Charity Commissioner was that 64 members were enrolled in one day and that exercise could not have been carried out by the present trustees.

10. Aggrieved by the aforesaid order of the Dy.Charity Commissioner, petitioners preferred Appeal No.38 of 2005 before Joint Charity Commissioner and the same was dismissed as not maintainable. A copy of the order is annexed as Annexure I.

11. Petitioners decided to file writ petition challenging the judgement and order of the Joint Charity Commissioner. However, it is their case that respondent No.13 preferred a writ petition in this Court being W.P.No.6462 of 2005 raising the issue of the ensuing elections. A Division Bench of this Court, disposed of this petition by the following order:-

". Rule. Heard forthwith.

. It is the contention of the petitioner that the Charity Commissioner has called for the report in so far as membership of the Trust is concerned. Before the Charity Commissioner could decide the issue of membership, the Trust has issued notice for holding elections. By the present petition, the petitioners pray that the Trust be restrained from holding elections.

. We have heard the learned counsel for the petitioners. Considering the controversy about membership is being enquired into and enquiry report is submitted, ends of justice will be met if the Charity Commissioner is granted time upto 30th November 2005 to decide the

> dispute about the membership. On such decision, the elections should be held. In the meantime, the committee already appointed to continue till the elections are held and the new committee is elected. It is made clear that the continuance of the committee will not stay in the way of their contesting the elections. Rule made absolute accordingly. No order as to costs."

12. In the light of the above directions of this Court, it appears that the request of petitioners to accept their membership was renewed but by order dated 29th November 2005, the applications have been again rejected.

13. The grievance of petitioners is that by the order dated 29th November 2005 (impugned order) the Dy.Charity Commissioner has affirmed his order dated 24th June 2005 passed earlier.

It is their grievance that the Dy.Charity Commissioner did not verify register of members and records relating to their applications. He wrongly relied upon a report of Inspector from the office but the said Inspector did not verify the records and even did not bother to peruse the report of his Superior submitted on 21st May 2005. According to petitioners, the report of Office Superintendent dated 21st May 2005 (Annexure A) certifies the entire list from Serial Nos.1 to 248 and puts his seal and signature thereon. In these circumstances, the impugned order could not have been passed.

14. In W.P. No.878 of 2006, the above facts are more or less repeated and identical challenge is raised to the impugned order. During the pendency of W.P. No.878 of 2006, it was brought to the notice of this Court by petitioners in W.P.878 of 2006 that vide order dated 10th February 2006, an Election Officer is appointed

by the Dy.Charity Commissioner and election programme for was also announced. A copy of that order is annexed as Annexure "C" to C.A.No.668 of 2006. Therefore, the request is to set aside this order as well.

15. Mr.V.A.Thorat, learned Senior Counsel appearing for petitioners in Writ Petition No.9133 of 2005 submits that the list of members forwarded to the Dy.Charity Commissioner is for verification and certification only. No adjudication is contemplated by the scheme. An Officer was deputed to scrutinise and verify the applications. He has submitted his report which is on record. He has, after taking note of objections, in his report, observed that the applications are in order and there is no question of the objections being considered. Mr.Thorat then submits that it is not the case of opponents that petitioners are not eligible for being enrolled as members. He submits that the

petitioners are beneficiary members and they have all such rights, as are enjoyed by others, to participate in the affairs of the Trust. He submits that the Inspector in the office of Dy.Charity Commissioner is subordinate to Office Superintendent. He did not examine a single application. However, the Dy.Charity Commissioner relied upon his report and passed the earlier order which is specifically set aside by this Court. It is the respondent who approached this Court vide earlier petition and the order therein came to be passed. Petitioners are not made parties to this petition. He submits that the Dy.Charity Commissioner by the impugned order directs inclusion of 90 members instead of 182 permitted by the earlier order. He invites my attention to the scheme including clause 6 therein and submits that the scheme is in pursuance of a quasi judicial exercise undertaken prior thereto. Initially, trustees were removed and in the interest of the Trust,

directions were issued to frame a scheme for its administration and management. He takes me through the order dated 6th April 2000 and submits that even when the scheme was being sanctioned, there were applications of interested persons for membership. He has also invited my attention to the operative order which clearly stipulates that the property will be vest in, from the date of the order, with the first Board of Trustees but they were directed to comply with other clauses and a Administrator was directed to hand over charge to the first Board. In these circumstances, it cannot be said that the Trustees were in error in accepting the applications. Mr.Thorat has referred to an affidavit filed by the Trustee/ Vice-President of the Trust in W.P.878 of 2006 wherein in para 30 after setting out the complete programme of elections chalked out by the Trustees, it is specifically averred that as far as issuance of ballot papers are concerned, separate ballot

papers are issued to the members from Senior Nos.1 to 185, 185 to 248 and from Serial Nos.219 to 338. He submits that this contemplates inclusion of all the members.

16. Mr.Thorat has raised a serious grievance with regard to the jurisdiction, power and authority of the Dy.Charity Commissioner to pass impugned order. He invites my attention to Section 41A and Section 68 of the B.P.T.Act. He placed strong reliance on the decision of this Court in the case of Asaram Bhimrao Shinde & Ors., Vs. State of Maharashtra & Ors., reported in 2001 (4) M.L.J. 548, wherein this Court has clearly observed that in exercise of its powers to issue directions, the Charity Commissioner cannot remove or appoint any new Committee for the administration of the Trust. He has relied upon the finding of this Court in that behalf at para 11 and 12 of this judgement.

17. Mr.Thorat submits that it is well settled that under the guise of issuing directions, the authorities cannot interfere with the discretionary power of the Trustees to enroll members and any such direction or order would amount to interfering with and violation of the mandate of Article 19(1)(c) of the Constitution of India. Mr.Thorat, made a serious grievance that this is nothing but an attempt by the Trustees who have been removed earlier to stall the elections. He submits that the petition, therefore, be allowed as this is a fit case for interference by this Court in its jurisdiction under Article 226 and 227 of the Constitution of India. A case is made out to quash and set aside the impugned order because it is vitiated by an apparent error and the Dy.Charity Commissioner has exceeded his jurisdiction while issuing the impugned directions.

18. Mrs.Agarwal, learned Counsel appearing in

support of W.P. No.878 of 2006 has adopted the submissions of Mr.Thorat and additionally she contends that this is the action of the trustees. The trustees are empowered to decide in accordance with the scheme, about enrolment of members. She also submitted that the affidavit of the Trustee filed in W.P.878 of 2006 would demonstrate that even while framing election programme Dy.Charity Commissioner and the Inspector appointed in his office have purported to prepone the date of publication of the final list of contesting candidates. There is a foot note below the communication dated 15th February 2006. She has submitted that in the light of the developments in this Court while hearing these petitions. on earlier occasions, election programme is chalked out by the Trustees as set out in the C.A. For all these reasons, she prays that the order of the Dy.Charity Commissioner be set aside.

19. Mr.Anturkar, learned Counsel appearing for respondent No.13 in W.P.9133 of 2005 has supported the order passed by the Dy.Charity Commissioner. He submits that the term of Trustees (first Board) is for a period of five years from the date of the order of sanctioning the scheme, in other words from 6th April 2000. If the order is communicated on 29th April 2000 to the Trustees, then at the most, the period of five years, would commence from that date. However, he submits that the crucial question as to whether they have assumed charge and started functioning as contended with effect from 5th June 2000 or from the above date has to be decided in the light of the clause of the scheme. He submits that the period expires as above at the end of April 2005 and the purported resolution dated 2nd May 2005 is beyond the period of five years. It is, therefore, beyond the power and authority of the first Board of Trustees.

20. He submits that respondent No.13 is expelled by the Trustees from 12th June 2005 which also is beyond stipulated period of five years. He submits that this resolution is bad in law, even on the own showing of the petitioners, because the Trustees having assumed office on 5th June 2000, the period expired on 5th June 2005 and this Resolution is, therefore, unsustainable. The first board of trustee cannot expel respondent No.13 who is already a member. In any event, they have no authority to do so. Mr.Anturkar has taken me through the proceedings under Section 41D and has contended that the expulsion of respondent No.13 on the grounds which have not been accepted in earlier adjudication is patently erroneous.

21. He submits that the crucial issue is with regard to the jurisdiction of the Charity Commissioner. He submits that petitioners as

well as trustees cannot be allowed now to challenge the jurisdiction of Charity Commissioner. He submits that even in memo of writ petition, there is no ground with regard to jurisdiction of the Charity Commissioner. He submits that the Division Bench order having gained finality, it cannot be argued now that in terms of that order the matter could have gone only to the Charity Commissioner and not to the Dy.Charity Commissioner. In any event, he submits that allowing now the issue of jurisdiction to be raised would cause great prejudice to respondent No.13. Mr.Anturkar has invited my attention to section 8 of the B.P.T. Act. In his submission, issue of jurisdiction as also about the ambit and scope of section 48A is misconceived because, according to Mr.Anturkar, this provision will have to be read with Clause 21(3)(e) of the Scheme. There is a presumption that the Charity Commissioner is exercising powers through the Deputy or Assistant Charity

Commissioner. In any event, in the scheme, Assistant or Dy.Charity Commissioner has retained his power. It is the authority designated for the purpose of verification and scrutiny of the applications for membership. He submits that issue of jurisdiction cannot be raised as the petitioners had challenged the initial order dated 24th June 2005 by filing an appeal before Joint Charity Commissioner. Thus, it is the Assistant/ Dy.Charity Commissioner who is intended to be the authority even in the Division Bench order of this Court.

22. Mr.Anturkar has then contended that petitioners has acqueised in the jurisdiction of Dy.Charity Commissioner as they themselves have gone to him with a request that 64 persons be enrolled as members. He has invited my attention to para 17 at page 16 of W.P.9133/05 and para 18 page 17 of the same in support of his submissions. On merits Mr.Anturkar has invited

my attention to the scheme and page 17 of the Compilation of documents tendered by him. He submits that in the application for, modification of the scheme, made on 7th April 2001, the Trustees have themselves contended that they have been appointed on 6th April 2000. They know that the period commences from that date. Thus, it is now not open for them to contend that the period of five years should be taken to have commenced from the date of assumption of offence. He submits that period of three years commences from 6th April 2000 and no policy decision can be taken after 6th April 2005. He submits that advertisement and the Resolution at page 80-81 are clearly beyond the term of trustees. Enrolment is a policy decision. He submits that it was plain duty of the Trustees to commence the electoral process. They were obliged to do so with effect from 5th January 2005. He submits that the reason, that there is dearth of Graduates in Junnar Taluka or that they are

contributing Rs.7000/- each is of no relevance. That will not enable the trustees to take any decision of enrolment of members. More so, when their term came to an end. Mr.Anturkar has invited my attention to the order passed by the Dy.Charity Commissioner and submitted that the issue of authority of the Trustees was specifically argued and decided. He submits that the membership could be without voting rights as well. He submits that the issue of prejudice does not arise because in this election, the members, 64 in number would not get voting rights. He submits that the elections are now going to be held only for 8 posts even by the programme of the Trustees. He submits that considering the rival contentions and keeping in mind the interest of the Trust, the Dy.Charity Commissioner thought it fit that some independent person should hold elections and, therefore, the decision to appoint Election Officer does not require any interference. Mr.Anturkar has relied

upon an order passed in C.A.854 of 1999 in F.A.110 of 1999 and pointed out that respondent No.13 has not been removed but he has tendered resignation. Therefore, his membership rights are not, in any manner, affected and could not have been taken away. In any event, Mr.Anturkar submits that this is not a case where it may be said that Dy.Charity Commissioner has exceeded his jurisdiction or that the order is vitiated by any error apparent or perversity so as to be interfered in writ jurisdiction.

22. In the light of the rival contentions, the only question that falls for my determination is whether the order of the Dy.Charity Commissioner dated 29th November 2005 is vitiated and that determination will have to be in the light of the admitted facts and rival contentions.

23. For appreciating them, it is necessary to

refer to the order passed and the directions issued in it. Firstly, the Dy.Charity Commissioner re-affirms, re-confirms and maintains his earlier order passed in Misc.Application No.63 of 2005 on 24th June 2005. According to him, the petitioners never acquired the status of members or right to membership. In the light of this, he directs his office Superintendent to prepare final list of members for participation in the forthcoming elections and that is from serial No.1 to 184 by accommodating and deleting Serial No.8 and deceased members at Sr.Nos.6, 24, 44 and 104. These names are taken by him from the list which is submitted for his approval by the Trust. He also includes subsisting and surviving members from those 90 which are found to be enrolled long before formation of the scheme by Inspector in Enquiry No.55 of 2005. He sets aside the resolution dated 12th June 2005 cancelling membership of respondent No.13 by declaring that

the same is illegal and beyond the scope and authority of present Trustees. Thereafter, he allows application Exh.31 for appointment of election officer.

24. The above directions are issued by him, after he concludes that there is no merit in the contentions of petitioners that Trust was benefited with their membership fees and that they were not served with any notice before dis-approving their membership by a judgement in Misc.Application No.63 of 2005. His observations in para 4 of the impugned order read thus:-

> "4. The intervenor third party comprising some of the surviving 64 members getting their appeal dismissed before the Joint C.C.preferred to re-agitate same issue twice before this authority, only with two points. The first was that, the trust was being

benefited with their membership fees and second was that they were not served with any notice before the disapproving their membership, by a judgement in M.A.No.63 of 2005. Calling or not calling appearance or non appearance of some one does not make any difference, when the decision delivered even in their absence is based upon undisputed documentary evidence. It is a matter of record that these intervenor third group claims to have enrolled themselves as members by doing every thing within a day, as that is described in detail in the Judgement of M.A.No.63 of 2005 i.e. (i) membership announced, (ii) applied for forms, (iii) paid for forms; (iv) forms were received (v) filing of forms, (vi) submission with Secretary, (vii) calling of meeting, (viii) approval of membership, (ix) depositing membership fees (x)

registration as member. This all commenced and accomplished within a day, that too when tenure of the trustees working under the scheme appointed as such by the Joint C.C. had been expired. Any way, the point of non issuing notices and their disapproval was made a point of challenge in the appeal, that is also dismissed. Even otherwise the object of issuing notices was to secure their presence and it has been fulfilled by their suo mottu intervention. Further more, they have also again filed their say solely based upon the point of pecuniary benefit to the trust of their membership fees and deprivation of it, if their membership is disapproved. This is not acceptable and patently erroneous belief of ground which is invalid and irrelevant for approval of membership."

25. The Dy.Charity Commissioner is aware that this Court had set aside the order in Misc.Application No.63 of 2005 dated 24th June 2005. I have reproduced the order passed by this Court. It is nobody's case that order dated 24th June 2005 is surviving after the Division Bench Order. It was clearly understood that the issue of membership is being enquired into and the dispute in that behalf must be decided upto 30th November 2005. This Court has said that on such decision, the election should be held. The argument, therefore, is that the has to be necessarily given effect to and the elections must be held in accordance with the same and more particularly in the light of the directions of Division Bench.

26. Ordinarily, there would have been no difficulty in accepting this submission but the manner in which the Dy.Charity Commissioner has

passed the order under challenge, leaves me in no manner of doubt that he had pre-judged the entire issue. He was clearly of the opinion at the initial stage as well as after the matter was remanded back, that the first Board of Trustees could not have entertained and considered the applications of petitioners for membership. The order of the learned Charity Commissioner is not happily worded. There is absolutely no clarity apart from glaring grammatical mistakes. The Dy.Charity Commissioner has limited the issues. From the order it is clear that his observations and findings in the earlier order have been again confirmed. The earlier order does not survive as observed above.

27. With the assistance of learned Counsel for both sides, I have perused the earlier order dated 24th June 2005 as well as the impugned order. The earlier order dated 24th June 2005 is annexed as Annexure A to W.P.9133 of 2005. The

order dated 24th June 2005 (earlier order) proceeds on the basis that all four applications before the Dy.Charity Commissioner viz., Misc.Application No. 63 of 2005 and Misc.Application Nos. 5 to 7 of 2005 all raise common questions and can be disposed of by a common order. This order reads thus:-

> ". The O.S. as well as even the Inspector of this office pointed out following illegalities, laws, flaws, defects, irregularities in the Application 63 of 2005 (hereinafter referred as the first application).
>
> (i) Although it claimed to have commenced registration of membership since 7th May 2000 out of listed 248 members process of admitting 84 in all (from 185 to 248) is commenced and concluded in and within a day i.e. 2/5/2005. Applications of all of those are called their membership fee is shown received sanction is said to have been accorded;

(ii) Notice to members given if any is neither shown to Inspector nor is it produced on record;

(iii) No evidence was shown to the Inspector as to the payment of fees for conferring membership. It is also not produced on record.

(iv) Claim for admitting few being old was not sustainable empowering the trustees to admit few without accepting fee.

(v) Scheme Col.21(3)(e) prescribed upon the Secretary to get list of membership approved each year from this authority;

(vi) list of members as well as Register of Membership is not maintained in the prescribed form;

(vii) It do not bear the signature of each member;

(viii) The method of getting sanction on 13/3/2005 for Rules for Election by raising the subject @ meeting all of a sudden not placed in agenda and cryptic reference of its sanction without exact reproduction of text throws clouds of reasonable suspension against it.

2. Others filed to seek direction to

include their names as members in membership list and to allow them to cast vote reagitates same issue of grant or receipt of membership.

. In view of Notification No.12674/P dated 10/6/1975 M.G.G. Pt.IV (b) dated 10/6/1975 page 457 power to be exercised under section 41A by the Charity Commissioner was also made exercisable by the Deputy and Assistant Charity Commissioners of the Charity Organisations within their respective jurisdiction. A ruling reported in 1995 MHLJ was relied upon to point out that similar provisions are found in Section 41A was enacted to empower the authority with preventive measures for issuing directions relating to matters falling Under Section 32 to 41 of the Act for proper administration of the Public Trust

or proper accounting or for appropriate application of the income to the objects of Trust. It was observed therein that it does not contemplated adjudication and therefore, it is not subject to the rules of natural justice and neither appealable or changeable under section 72. Therefore, none of the reliefs claimed by 2nd to 4th come within the purview of Section 41A. However, the ruling relied upon by the Opponent in App.5/05 (1993 Mh.L.J. 1056) does not apply to the facts and circumstances of the present case. Here illegality has been surfaced out from the documentary evidence produced and suppressed to produce. Hence, considering nature of disputes in respect of this Trust and considering points of arguments of both the sides, in the facts and circumstances narrated above, I find it necessary to pass the

following order to remove interference @ election, so that it should not be hold with bogus members to usurp power then leaving the other side to litigate till next period of election.

ORDER

(i) The first application i.e. Misc.Application No.83 of 05 filed for verification of membership list is partly allowed only for and to the extent of members from Sr.No.1 to 184;

(ii) Rules framed for election are approved so far as those do not cause harm to the democratic pattern and do not claim dictatorship;

(iii) The inspector Power shall hold inquiry @ the applicants office of trust to find out and report. If there are any other members lawfully enrolled within prescribed period of limit on receipt of membership fee;

(iv) Present Trustees failure to redress the lawful grievances of other side may provide them a ground to oppose election and challenge the change report;

(v) All the other applications i.e. 5, 6 and 7 of 2005 are rejected;

(vi) Parties to bear their own costs;"

28. The order is reproduced with mistakes and inconsistencies. It is confusing to say the least. In a contested matter, this is not the manner in which any order should be passed. The Dy.Charity Commissioner has in the earlier order partly allowed Misc.Application No.63 of 2005 and directed the Inspector to enquire and report. He rejects other applications, viz., 5 to 7 of 2005. In para 7 of the impugned order, he faults the Trustees as well as third parties of mis-interpreting the meaning and scope of the enquiry to be conducted by the Inspector as directed in his earlier order. Paras 6 and 7 of the impugned order dated 29th November 2005 read thus:-

"6. The first party of Tambe group

supports intervenor third party, both of whom have filed their pleading and arguments on the same line of defense to support the case of each other. However, truth is not declared by counting the supports or by looking at majority. The first party desiring voting in their favour from third party of intervenor claims against the clear statutory provision expressed in Clauses 6 and 13 of the scheme that the enrollment of membership does not amount to policy decision. This is an outright erroneous and false claim made with only intention to secure surely the post of trustee @ next forthcoming election with majority of newly recruited members. Certainly, it is not a routine function coming under daily transaction, day to day affair, essential to carry out for running the trust. Nevertheless and after all these

third party intervenor out of 64 have not thus come with any new defense or evidence which can be accepted to reconsider their case, to approve and accept their membership. They as well as the caretaker Mandal, constituting first party holding over the administration of the Trust, failed to show any valid ground to consider or reconsider their case much less to reverse or revise finding. None of those 64 disapproved members shows any legality for/behind their enrollment as members. Likewise the first parties case that it started to function late from 5/5/2000 shall never allow them to extend the period of their tenure permitting to start counting from that date, instead of the date of order. When one is not entitled for anything, then he cannot be complained for having been deprived for something. The fatal

irregularities clearly looking like mal-practices and illegality were apparent from the record itself, although, no notices were issued to those 64 or surviving some out of them. After all now even after appearance they have put up no tangible cause, sufficient explanation to show their legitimate enrollment. This situation of defense and evidence leaves these intervenors at the level of proof found while deciding M.A.No.63 of 2005. Hence, I held that, their names have been rightly disapproved and rejected, which finding has not even disturbed by the appellate authority.

7. The first and third parties also misinterpreted the meaning and scope of Inspector Inquiry directed by the order passed in the judgement of M.A.No.63 of 2005, to contend that, the Inspector was

thereby directed to examine and select all or few out of these 63 rejected and disapproved members. This is erroneous impression. The case of 64 was finally decided and that was not to be reopened by Inspector Inquiry. The Inspector in his detailed and reasoned report shown that he was hold enquiry and detected already enrolled but hidden and suppressed 90 members for and while getting the scheme approved by seeking appointment of the first party. Those 90 are already enrolled members of the Trust but ignored and neglected for the reason and under the facts and circumstances mentioned in the Inspector’s report. It is relevant and significant to note that the status and existence of these already enrolled members has been kept intact under the newly formulated scheme. Although, not specifically mentioned with

names the clause C(6) preserves their existence and status. Similarly, the resignations contended by the first party of the trustees named by them pertained to their membership and not of membership. It does not affect their status as members, the dispute is pending where it can be decided finally, but presently their right of membership is uncurtailed and uncancelled. Clause 3(e) of the scheme made it mandatory for the trustees to submit annually on or before 31st March every year, the list of all members of the trust for getting its approval. It is significant to note how fatal it would be, if it is submitted causing inordinate delay and under the suspicious circumstances. Any way, the other side has no point to complain against inclusion of these 90 members enrolled long back. Hence I answer point

accordingly."

29. A reading of the above re-produced paras would clearly show the unsatisfactory state of affairs. The Dy.Charity Commissioner should not have relied upon the findings in the earlier order. The earlier order heavily relies yupon the observations of the Inspector working in Charity Commissioner’s office. Similarly, merely because he directs the Inspector in his office to hold inquiry he could not have relied upon the contents of his report as the earlier order dated 24th June 2005 did not survive after the order passed by this Court on 30th September 2005. The Dy.Charity Commissioner has also relied upon the report of the Office Superintendent which was also before him. If the Office Superintendent’s observations are to be taken into account, then he does not say that the entire list forwarded by the Trustees should be discarded. He does not accept the version that 64 applications have been

considered and granted on a single day by the Trustees. In these circumstances, when the dispute about membership was to be decided by the Charity Commissioner himself, the Authority could not have relied upon some enquiry conducted by the Inspector and put his stamp of approval on the findings therein. That the above course was not open to the Dy.Charity Commissioner, is clear because on the earlier occasion viz., passing of the order dated 24th June 2005, he did not give any notice to the petitioners (64 members) nor afforded an opportunity of hearing to them. He proceeded to cancel their membership. He thinks that they are not prejudiced because when he passed the later order dated 29th November 2005, they suo mottu appeared before him. While it is true that they appeared but it was his bounden duty to have decided and adjudicated upon all contentions with regard to petitioner's membership including the power and authority of the Trustees under the scheme to enrol them. If

he decides to accept the names listed at Sr.Nos. 1 to 184, as to what compels him to reject the names thereafter, is not clear from the order under challenge at all.

30. I am shocked at the manner in which the matter has been approached by the Dy.Charity Commissioner. The proceedings were pertaining to a Trust located in interior Maharashtra. Nothing prevented the Dy.Charity Commissioner from conducting the proceedings and passing an order in the language of State i.e. Marathi. Apart from grammatical mistakes and poor English, the order under challenge discloses total non application of mind. The trustees as well as objectors have placed their interpretation with regard to the clauses of the scheme. They had also pointed out materials as to when the period of five years stipulated under the scheme would commence. The Dy.Charity Commissioner has not adverted/ considered any of them. He has been

totally influenced by his earlier order and by Inspector's report. This is not the manner of conducting an enquiry and deciding disputes, with regard to membership. This is not a compliance with the order passed by this Court at all. The order passed by this Court and reproduced above, makes it amply clear that it is the Charity Commissioner who must decide the dispute of membership. This direction is issued after taking note of the contention that an enquiry report is also submitted. Before the contents of the enquiry report could have been relied upon, it was incumbent on the Charity Commissioner to have given full opportunity to the Trust as well as the affected parties and allowed them to place all materials in support or to oppose the contents of this report. The Dy.Charity Commissioner has not at all bothered to implement the directions of this Court, leave alone, acting in furtherence thereof. In the above circumstances, I have no alternative but to quash

and set aside the order dated 29th November 2005.

31. The question now is, what order should be made?

32. If the matter is to be remanded to the Deputy Charity Commissioner, then, the issue raised is, whether he could exercise powers under section 41-A and decide the dispute of present nature and issue any directions to the Trustees with regard to enrolment of members. A serious debate was raised before me and reliance was placed by both sides on Section 41-A of the B.P.T. Act. The said section reads thus:-

> "41-A:- Power of Commissioner to issue directions for the proper administration of the trust -- (1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue

directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

(2) It shall be the duly of every trustee or of such person to comply with the directions issued under sub-section (1)"

In the case of Lahudas Sambhaji Karad Vs. The

State of Maharashtra & Ors. reported in 1994(1) B.C.R. 103, this Court while examining the ambit and scope of this provision observed thus:-

> "24. The underlying idea of Section 41-A is that those directions should relate only to administration of the public trust or for proper accounting or for appropriate application of the income to the objects of the said trust. Such directions could be issued only in respect of the matters falling under sections 32 to 41 of the Act and not beyond that, because whatever loss or damage to the trust is likely to happen, that would be sequel to the breaches under sections 32 to 41 of the Act. Bombay Public Trusts Act does not envisage any loss or damage beyond these provisions in respect of mismanagement or wrongful accounting. Elections are

wholly beyond the perview of those provisions. Section 32 is in Chapter V of the Bombay Public Trusts Act. It provides for maintenance of accounts, auditing of accounts, preparation of balance sheet etc. Sections 32 and 33, therefore, require that the accounts of the society should be properly maintained in order to ensure that the property or the funds of the society are not wrongly expended away without proper accounting. Under section 34, auditors are under duty to prepare balance sheet and income and expenditure account. The auditor has to point out irregularities. Under section 35, the trustees are bound to invest the funds of the trust in the manner indicated in that section. Section 36 relates to alienation of the immovable property of the public trust. Section 36-A is in respect of powers and duties

and restrictions on the trustees. It enjoins upon the trustees to exercise powers in respect of properties incidential to prudent and beneficial management of the trust. There is a restriction on borrowings of money by way of mortgage or otherwise except without permission of the Charity Commissioner. Section 36-B requires the public trust to maintain register of all movable and immovable properties and this is subject to audit. Section 37 in Chapter VI of the said Act provides for the powers of the Charity Commissioner, Deputy Charity Commissioner or Assistant Charity Commissioner to carry out inspection and supervision over the trusts. Section 38 calls upon the auditors to prepare reports about the accounts. Section 39 relates to the report to the Charity Commissioner about the complaints

relating to gross negligence, breach of trust, misappropriation or misconduct on the part of the trustees resulting in loss to the trust. Section 40 requires the Charity Commissioner to scrutinise those reports and compliance and determine the amount of loss to the public trust because of the negligence, breach of trust etc. on the part of trustees. Section 41 provides that the amount of loss caused by trustee or any person could be surcharged on that person. Under section 50 of the said Act, it is provided that the loss caused to the trust could be recovered from the trustee responsible for it by a suit.

25. This would show that the main safeguards that have to be kept in mind by the Charity Commissioner or the Joint Charity Commissioner are in respect of

> the property and other affairs of society. If there is negligence in the management of affairs of the society, directions could be issued but the scope of section 41-A would certainly not cover the interference with the process of election and also interference in respect of the members entitled to vote."

33. My attention was also invited to another decision of this Court in the case of Nathmal Kisanlalji Goenka and Anr. Vs. Asstt. Charity Commissioner, Akola and Anr., reported in 1994 Mh.L.J. 203. Relying upon the earlier decision, (Supra - 1994 BCR 103) and noticing Section 41-A a learned Single Judge in paras 4 and 5 has observed thus:-

> "4. Section 41-A is introduced by the Maharashtra Act V of 1985 with effect from 1/8/1985. Amendments made to the

Bombay Public Trust Act, Maharashtra Act V of 1985 provide elaborate provisions regarding the steps that may be taken to prevent the loss in case of mismanagement in the affairs of the Public Trust.

. Prior to the amendment of section 41-A, even if it has been brought to the notice of the Charity Commissioner or if he learnt otherwise that either a public trust is mismanaged or is not managed properly or that the income of the said trust was not properly accounted for, he was helpless as there was no power conferred upon the Charity Commissioner to prevent any loss being caused to the public trust or to prevent any public trust being mismanaged or to give any direction to the trustee or any other person connected with the said trust or

to see that the income of the Public Trust was duly accounted for. The Act provides very elaborate provisions regarding the steps that may be taken in case of the acts of mismanagement or the loss caused to the Public Trust by the trustees of the said Trust. The elaborate provisions have been provided either under section 41, 41 or 50 of the said Act, but the recourse to the above sections could be taken only after the loss or mismanagement has been caused. There was, therefore, no provision under the Act, empowering the Charity Commissioner to prevent such loss or mismanagement. The Charity Commissioner was empowered to issue directions or adjudicate the matters falling under sections 32 to 41 of the Bombay Public Trust Act, 1950. These sections provide for proper administration of the public

trust or proper accounting or appropriate application of the income of the trust to the objects of the said trust. Section 41-A, therefore, does not contemplate any adjudication and is, therefore, not subject to the rules of natural justice and obviously those directions are not appealable nor could be questioned under section 72 of the Bombay Public Trust Act. They are not in the nature of quasi judicial directions. Such directions could be issued to the trustees or any person connected with the Trust and every trustee or a person to whom such directions are issued is bound to comply with them under section 41-A(2) of the said Act.

5. The underlying idea of section 41-A of the said Act is that those directions should relate only to:-

(a) proper administration of a public trust, or

(b) for proper accounting of its income, or

(c) for appropriate application of the income to the objects of the said trust;

. This would show that the main safeguards that have to be kept in mind by the Charity Commissioner or the Joint Charity Commissioner are in respect of the property and other affairs of Society. If there is negligence in the Management or mal-administration of the affairs of the society, directions could be issued under section 41-A of the Act, including that of election. Section 41-A does not contemplate any adjudication on any subjects. This section gives powers to the Charity Commissioner/ Joint

Charity Commissioner only to issue directions to any trustee or any person connected with the Trust. The directions are intended to be issued for better and more effective administration of a public trust. No question of adjudication of any controversy or dispute arises thereunder. The object of section 41-A, as discussed earlier, is to streamline the administration of public trusts and to ensure more effective implementation and enforcement of the provisions of the said Act. Under Section 41-A, directions may be issued to any trustee or any person connected with the trust. Considering the object and purpose of the amendment to section 41-A, the Charity Commissioner is also empowered to issue directions to the trustee to hold election in the interest of administration and proper management of

the Trust. In the case of Lahudas Karad cited supra my learned brother in para 7 referred the Writ Petition No.1304 of 1992 decided on 17/2/1992 upholding the powers of the Joint Charity Commissioner to issue the directions to hold the election. Para 7 is reproduced as under:-

> "7. The learned Joint Charity Commissioner, after detailed consideration of the affidavits and other documents, came to the conclusion that the Governing Council should hold fresh elections and that the respondent President should withdraw the said advertisement dated 17/8/1991 and also the letters written to the Director of Education and Marathwada University. The Petitioner in W.P.No.1304 of 1992 challenged the decision in W.P.No.3878 of 1991 and this Court in its judgement dated 17th February 1992, upheld the power of the Joint Charity Commissioner to issue the directions as indicated in his above order dated 25/9/1991 and dismissed the writ petition with direction that the election programme should be

fixed within two weeks."

. In the case cited supra, the only question before the learned Court was that once the election process is commenced, whether the Charity Commissioner/ Assistant Charity Commissioner has powers to interfere with the process of election, set in motion, by issuing different directions? My learned brother Mr.Justice Halbe, has observed that under section 41-A of the Bombay Public Trust Act, 1950, the Joint Charity Commissioner has no powers to interfere with the process of election of the Governing Council of the Public Trust, already set in motion. I am also of the same view."

34. My attention is also invited to another judgement rendered by another learned Single Judge of this Court and this is more recent one. After noticing the above judgement and those rendered earlier the learned Single Judge of this Court (R.M.S.Khandeparkar, J) observes in paras 8, 11, 12 and 14 as under:-

> "8. Apparently, therefore, Section 41-A deals with the power of the Commissioner to issue directions for proper administration of the Trust. The phraseology used in the said Section nowhere discloses any power being given to the Commissioner to appoint any committee for the purpose of administration of the Trust. On the contrary, it speaks about directions to any trustee of the trust, or person connected therewith to ensure that the

trust is properly administered. It does not speak of appointment of the persons for administration of the trust but, on the contrary, to take steps to ensure that the persons who are in the administration of the trust act in the interests of the trust and diligently for the fulfilment of the objects and purpose of the trust. In fact, the power, regarding suspension, removal and dismissal of trustees from the management of the trust is given to the Charity Commissioner under different provision i.e. under section 41D.

11. The learned Single Judge in Nathmal Kisanlalji's case while considering the scope of section 41A has held that the underlying idea of section 41A of the Act is that those directions should relate only to (a) proper

administration of the public trust; or (b) for proper accounting of its income, or (c) for appropriate application of the income to the objects of the said trust. It has also been observed therein that there can be no question of any controversy or dispute while dealing with the matter under section 41A of rules of application of principle of natural justice. Undoubtedly the directions which can be issued under section 41A, therefore, are of administrative nature and they cannot relate to any quasi judicial powers of the charity commissioner. Quasi judicial proceedings would certainly require adherence to principles of natural justice while exercising such powers. As already observed above, section 41A speaks about only directions to be issued to the trustees or persons connected with the

trust for proper administration of the trust and for diligent performance of their duties by the trustee for attaining the objects and purpose for which the trust is established. It does not empower the Commissioner to remove or appoint any new committee for the administration of the Trust. Such powers are specifically bestowed upon the authority under section 41D.

12. Being so, the decision of the learned Single Judge which holds that section 41 does not contemplate adjudication and, therefore, question of application of principle of natural justice does not arise, is of no help to the respondent to contend that section 41A would include power to appoint a new committee either of trustees or persons connected therewith for the purpose of

administration of the trust.

14. Undisputedly by the impugned order, the Assistant Charity Commissioner, instead of issuing directions, if at all they were necessary, to the trustees or persons interested in relation to the administration of the trust, has directed the appointment of committee of three persons for the administration of the trust and that too when, the impugned order on the face of it discloses that, the Assistant Charity Commissioner was fully aware that the petitioner No.1 continues to be a secretary of the trust. There is absolutely nothing stated as to what happens to the office held by the petitioner No.1 during the tenure of the so-called newly appointed committee. Besides, the impugned order has been

passed solely on the ground that the working of the Secretary either appears to be something fishy or somewhat doubtful. Apparently, the authority itself was not satisfied of the materials placed before it that there was a case made out by the respondents to arrive at the finding about the mismanagement by the petitioners. It was necessary for the Assistant Charity Commissioner to analyse the materials on record and to ascertain whether those materials justify the finding and the action under section 41D of the said Act. Only then the Charity Commissioner could have exercised powers for suspension of the present committee and to appoint a new committee."

35. Since strong reliance is placed by

Mr.Thorat on this decision, it is necessary to advert to some facts. It appears that the petitioners before this Court had submitted a change report and the same was pending for approval of the Asstt.Charity Commissioner. During the pendency of these proceedings, application under section 41-A was filed on the ground that petitioners before this Court had illegally enrolled some members and they were close relations of the petitioners and besides that they had not submitted audited accounts for some period. There was mis-management of the Trust by the petitioners. It is in these circumstances, power under section 41-A was invoked. Mr.Thorat submits that the fact situation before me and the reported decision is identical. This Court has after referring to the relevant statutory provisions in para 11 held that the directions which can be issued under section 41-A are of mandatory in nature and they cannot relate to any quasi judicial powers. I

have reproduced para 11 of the report which contains the observations of the learned Single Judge with regard to the ambit and scope of section 41-A.

36. In my view, this decision is distinguishable on facts because, the issue before me is not of appointment of Trustees. The larger issue about the ambit and scope of powers conferred by Section 41A and whether that power can be delegated or not need not be decided in the case at hand. Here, there is no question of this Court directing that somebody should be appointed either as a Trustee or as Committee member. There is no question of appointing a new Committee either of trustees or of those connected with the Trust. Therefore, this decision is of no assistance in deciding the matter before me.

37. Even otherwise, this decision does not

lay down the law that deciding the dispute of the present nature has nothing to do with Administration of a Trust or does not touch its management. In a given case, as observed in para 14 reproduced above, directions could be given to the Trustees or persons interested in relation to the Administration of the Trust. None can dispute that enrolling members of the Trust is a matter touching its administration and management. Therefore, the order of Division Bench in the case at hand is neither nullity nor contrary to B.P.T. Act, 1950 The order of Division Bench is binding on the Trust and the Charity Commissioner. More so, when they have not challenged it in a Higher court. It is immaterial whether petitioners in this petition were parties before the Division Bench or not. The direction is to a authority. The Division Bench order of this Court pertaining to this very Trust, as noted above directs a decision on the dispute about enrolment to be taken by the

Charity Commissioner.

38. It is not unusual that such directions are issued to the charity commissioner. In another decision of Division Bench to which I was a party (Writ Petition No.702 of 2006 decided on March 21, 2006) this Court followed similar course while directing the Charity Commissioner to decide as to whether persons otherwise eligible should be enrolled as members of the Trust or not. This Court in paras 11, 15 and 16 this judgement observed thus:-

> "11. Mr. Dwarkadas, learned counsel appearing for the petitioners, submits that under the order passed by this Court on 6/5/2005, this Court had only directed the Charity Commissioner to finalise the list of members after the process of enrolling them was completed. This was clause 27(F) of the operative part of the

order on the earlier Writ Petition No. 265 of 2005. He submitted that under the garb of finalising the list of members, the Charity Commissioner had himself done the role of enrolling them. That was the exclusive prerogative of the Managing Committee under the above referred to rule 5(E). The Managing Committee has the right to reject the applications without giving any reasons. The trust had sufficient members and did not want further 32 members to be added. Therefore, their applications had come to be rejected. The Charity Commissioner could not override that decision.

15. The second submission of Mr. Dwarkadas is that the Court cannot create any jurisdiction which an authority does not have. According to him, the powers of the Charity Commissioner are

restricted and they are laid down in section 69 of the Act and these powers do not include enrolment of voters and finalisation of voters. He relies upon the judgment of the apex Court in A.R. Antulay V. R.S. Nayak [(1988) 2 SCC 602]. By its earlier judgment and directions in R.S. Nayak V. A.R. Antulay [(1984) 2 SCC 183], the apex Court had withdrawn a special criminal case from the Sessions Court at Mumbai and transferred it to the Bombay High Court. That direction was held to be bad in law by this judgment of seven Judges in (1988) 2 SCC 602. The decision was on the footing that the Supreme Court could not confer the jurisdiction on the High Court to conduct that trial which it did not have. It is, however, material to note that it was a case wherein the petitioner Mr. Antulay would have

suffered if the trial was to be conducted in the High Court, in as much as the very valuable right of the petitioner to carry an appeal to the High Court would have been defeated. This was amongst the various reasons why the Supreme Court held that it could not confer jurisdiction on an authority if it did not have it. In the present case, the position is quite different. Apart from Section 69 on which Mr. Dwarkadas relies, the Charity Commissioner has an overall power under section 41A to issue directions for proper administration of the trust under the Act. The present case is not a case of inherent absence of jurisdiction. When the Charity Commissioner passed the impugned order, he did not usurp the jurisdiction of the Managing Committee to enrol its members. He has merely corrected its erroneous

> decision under his powers under section 41A.
>
> 16. Mr. Dwarkadas submitted that even by consent, a jurisdiction cannot be conferred. As stated above, we have referred to the fact that under section 41A, the Charity Commissioner does have the overall superintendence over the administration of the trust. It is not that he is without any such power".

39. In the light of the above, now what remains is the implementation of the order passed by the Division Bench in the present case. One of the course suggested is that let the electoral process commenced by the Trust be allowed to go on and thereafter, the issue can be decided in appropriate proceedings. To my mind, that would not be proper, considering clear directions in

the Division Bench order. The Division Bench order notices the controversy viz., the Trust is proceeding with the elections without any decision on the issue of membership. Therefore, it would not be appropriate to permit the trustees to hold elections, without any decision on the dispute of membership. That would amount only to postponement of adjudication of the dispute regarding membership to a later stage. At the root of the matter is the power of the First Board of Trustees to enrol members. It is alleged that after their term is over, they cannot take any such or other policy decision. Thus, whether their term was over when they accepted the applications of petitioners and whether they could have taken a decision of 4the present nature are issues calling for adjudication and decision. Postponing such adjudication would not be in the interest of the Trust and all affected parties. Nobody will be prejudiced if the elections which are already

postponed are held little later.

40. The only course, therefore, open to me is to make the Rule absolute in these petitions to the extent of quashing and setting aside the impugned order and remanding the matter to the Charity Commissioner, State of Maharashtra or the Joint Charity Commissioner, Pune to decide the dispute of membership. Accordingly the order dated 29th November 2005 is quashed and set aside. Needless to state that the earlier order dated 24th June 2005 is also quashed and set aside. Misc.application No.63 of 2005 which was preferred to seek certification of the names of 64 members (petitioners herein) shall stand restored to the file of Charity Commissioner, Maharashtra for decision afresh on merits and in accordance with law. The Charity Commissioner shall permit parties to rely upon all materials including reports and enquiries conducted by Inspector and Office Supdt., in support of

respective pleas and pass appropriate orders on the above application after hearing parties thereto as also the Trust, uninfluenced by any observations in the orders which are quashed and set aside. All contentions of both sides on merits are expressly kept open. It is clarified that the present Board of Trustees shall continue to administer the Trust till the Charity Commissioner renders his decision but they shall conduct only day to day affairs and not take any major policy decision nor enrol any persons as members during this period. The Charity Commissioner shall complete the exercise as above within a period of three months from today.

(S.C.DHARMADHIKARI, J)